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7 ACCESS CAPITAL INVESTMENTS
FUND TWO, LP,
8 Plaintiff,
9 v.
10 EUFROCINIA RAMOS, et al.,
11 Defendants.

Case No. [16-cv-06434-MMC](#)

**ORDER REMANDING ACTION TO
STATE COURT**

Re: Dkt. No. 5

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13 Before the Court is Magistrate Judge Elizabeth D. Laporte's Report and
14 Recommendation, filed November 7, 2016, by which Magistrate Judge Laporte
15 recommends the Court remand the above-titled action, in which plaintiff alleges a claim
16 for unlawful detainer. Defendants have filed an objection. Having reviewed the matter de
17 novo, the Court hereby rules as follows.

18 For the reasons stated in the Report and Recommendation, the Court finds it lacks
19 subject matter jurisdiction under 28 U.S.C. § 1331.

20 In their objections, defendants argue jurisdiction nonetheless exists pursuant to 28
21 U.S.C. § 1443(1).

22 In order to establish jurisdiction over a removed action pursuant to § 1443(1), the
23 removing defendants must satisfy a two-part test. See Patel v. Del Taco, Inc., 446 F.3d
24 996, 998 (9th Cir. 2006). "First, [defendants] must assert, as a defense to the
25 prosecution, rights that are given to them by explicit statutory enactment protecting equal
26 racial civil rights." Id. at 999 (internal quotation and citation omitted). "Second,
27 [defendants] must assert that the state courts will not enforce that right, and that
28 allegation must be supported by reference to a state statute or constitutional provision

United States District Court
Northern District of California

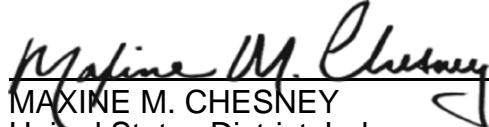
1 that purports to command the state courts to ignore federal rights." Id. (internal quotation
2 and citation omitted). Here, although defendants assert that, under the Fourteenth
3 Amendment, they have due process and equal protection rights and consequently cannot
4 be discriminated against on account of their national origin, they do not point to any
5 provision of California law "that purports to command the state courts to ignore federal
6 rights," see id., and, in particular, cite no state law commanding state courts not to
7 enforce the Fourteenth Amendment. Nor could defendants do so, as it is settled law in
8 California that a defendant in an unlawful detainer action may base a defense on the
9 Fourteenth Amendment. See, e.g., Abstract Investment Co. v. Hutchinson, 204 Cal. App.
10 2d 242, 244, 255 (1962) (holding defendant, as affirmative defense to claim of unlawful
11 detainer, may assert plaintiff seeks to evict defendant due to defendant's race).

12 Consequently, the Court lacks subject matter jurisdiction under § 1443(1).

13 Accordingly, the above-titled action is hereby REMANDED to the Superior Court of
14 California, in and for the County of San Mateo.

15 **IT IS SO ORDERED.**

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17 Dated: November 22, 2016


MAXINE M. CHESNEY
United States District Judge

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